

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF: PETITION FOR RATE INCREASE BY KENT’S HARBOR))))	ADMINISTRATIVE CAUSE NUMBER: 08-078P
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**REPORT OF HEARING OFFICER, INCLUDING FINDINGS
AND PROPOSAL TO THE NATURAL RESOURCES COMMISSION
AS TO ITS RECOMMENDATIONS TO THE U.S. ARMY CORPS ENGINEERS**

1. PETITION FOR RATE INCREASE BY KENT’S HARBOR

Kent Reineking, acting on behalf of Kent’s Harbor, filed a Petition dated March 29, 2008 with the Division of State Parks and Reservoirs of the Department of Natural Resources (*Department*) seeking rate increases for facilities operated on Brookville Lake. The Petition, which was forwarded to the Natural Resources Commission (*Commission*) and filed on May 8, 2008, seeks rate increases on all of the slips within the marina as well as lodging rates for the Sagamore Resort. Kent’s Harbor’s Petition included a table reflecting current rates and proposed rates associated with each slip size. Kent’s Harbor indicates in its Petition that the proposed rates reflect an increase of approximately 5% over its present rates, which were approved by the Commission two years ago.

Through his presentation at the public hearing, Mr. Reineking indicated that the rates being charged for the 24’ and 28’ slips on the I-Dock were interim rates established in conjunction with the Department. Kent’s Harbor is not only seeking confirmation of those interim rates but is actually seeking to increase those rates through the instant petition.

2. SCOPE OF REVIEW

Kent’s Harbor’s Petition is governed by a nonrule policy document approved by the Commission as Information Bulletin #20 (First Amendment) (<http://www.ai.org/nrc/policy/marinara.html>), and published in the *Indiana Register* on August 1, 2003 (26 IR 3761). The Commission reflected that the purpose of the document was to implement an informal process for the review of ratemaking recommendations for resorts and marinas under lease with the Department.

According to the nonrule policy document, a lessee desiring a rate increase for a guestroom, slip, or houseboat shall submit its request to the Department, in accordance with the existing lease agreement, by April 1 of the year preceding the year in which the lessee expects to implement the increased rate. Upon receiving a request, the Department

informs the Division of Hearings of the Commission (*Hearings Division*). The Hearings Division assigns a cause number and, in consultation with the Department, selects the date and time for a rate hearing to be held in Indianapolis. The Department advises the lessee of the date, time, and location in Indianapolis of the rate hearing, at which time the lessee and affected persons may provide comments to a Commission hearing officer.

Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate increase request are to be available for the public to review at the lessee's business office, during normal business hours. The lessee shall provide notice of the proposed rate increase petition to each slip or buoy renter. A copy is also to be made available for the public to review at the Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, Indiana, 46204. Affected persons may send written comments concerning the proposed rate increase to the Hearing's Division. In accordance with the existing lease agreements, the Department is to analyze comparable facilities to compare rates with those sought by the lessee. Information used in the analysis is to be available for inspection at the Division of State Parks and Reservoirs office in Indianapolis.

Affected persons may attend the rate hearing and provide oral or written statements. The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The Administrative Orders and Procedures Act (IC 4-21.5) does not apply, but the hearing officer is delegated full authority by the Commission to implement IC 14-11-1-3, and to make any orders reasonable in implementing the purpose of the nonrule policy document. The lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the Department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request for rate increase.

Following the completion of the review, the hearing officer is to prepare a written report to the Commission. The report is to include written findings with respect to the requested rate increase and a proposal to the Commission with respect to recommendations to the U. S. Army Corps of Engineers. The hearing officer shall also forward a copy of the report to the lessee, the Department, and any other person who requests a copy.

The hearing officer is to present the findings and recommendations to the Commission during a meeting to be held in August or September. During that meeting, the Commission will either recommend approval of the rate increase, disapproval of the rate increase, or approval of a rate increase in an amount less than requested by the lessee. Recommendation for favorable consideration of a rate increase will not be withheld unless, in the opinion of the Commission, fees submitted exceed fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

3. PUBLIC HEARING AND WRITTEN COMMENTS

Kent's Harbor provided the requisite notice of its Petition to affected persons. The notice provides details of the proposed rate increases and announces the ability of individuals to provide input regarding the petition. A public hearing was conducted as scheduled on July 9, 2008. Comments were received during the hearing as follows:

A. Petitioner at Public Hearing

Kent Reineking, Kent's Harbor

Kent's Harbor received its last rate increase two years ago and the rate increase proposed within the present petition would amount to an approximate 2.5% increase per year or 5% total increase. Mr. Reineking noted that costs to operate the marina have continued to increase. While personnel costs may be slightly increased by doing so Mr. Reineking also observed that in order to provide the quality of service his patrons expect it is better to keep full time staff as opposed to seasonal staff.

Mr. Reineking reflected that the I Dock construction was completed since the last rate increase and presently the rates associated with the 24' and 28' slips on the new I-Dock are being leased on interim rates. Kent's Harbor is seeking the Commission's establishment of a rate for these slips at an amount greater than the interim rate set by the Department.

The hearing officer inquired about the rate differential between the 24' slip on A-Dock, H-Dock and the new I-Dock. Mr. Reineking explained that the 24' slips on the A-Dock were constructed at the request of houseboat owners who have slips on A-Dock for the purpose of accommodating their small watercraft. These slips are newer and are in demand by the houseboat owners who requested their construction. The 24' slips on H-Dock have no electricity available. The 24' slips on I-Dock are priced higher due to the availability of electricity and water as well as the fact that the area is in demand partly because it provides greater maneuvering room.

Mr. Reineking also confirmed that the petition contains a typographical error and that the current rate for A-Dock slips "over 70" should be \$90.00 *per foot* and the proposed rate should be \$94.50 *per foot*.

B. Affected Persons at Public Hearing

Charlie Kahl, Slip Holder

Mr. Kahl stated that he rents two slips at Kent's Harbor and wanted to support Mr. Reineking's request for rate increase. He explained that often only those individuals in opposition to something will come forward and he believed it was important to support Mr. Reineking's Petition and applaud Mr. Reineking's operation of the marina. While noting that no one wants to pay increased fees, he believes that the increase is fair in light of the facilities provided and the professional manner in which Kent's Harbor is operated.

C. Affected Persons' Written Comments

Two written comments were received outside of the public hearing.

Paul Burton, email comment June 3, 2008

Today I received a letter from Kent's Harbor and Marine on Brookville Lake. The letter advised me of the rate increase hearing on July 9th. I do not have a problem with companies making a profit, and I can say with great confidence that Kent runs a very professional operation. Kent's Harbor offers a very high level of customer service at a reasonable rate.

I would like to see covered dock slips. We are renting a storage place for our boats and I think covering them from the long dry hot summer brings another level on protection to our investment.

Thank you very much for your service.

Gary Dunkle, email comment June 26, 2008

Kent's Harbor proposed rate increase is in line with inflation but he is the highest Marina in a several state area and getting out of line. They have implemented limited improvements into the facility unless it benefits him directly in enabling him to profit more but upgrades are very limited and the docks are deteriorating.

Specifically I would like to challenge the rate increase on the overhang of the boats. If your boat is longer than your slip Kent's charges the approximate amount per foot as the slip rate. Again if your boat is longer than your slip how can Kent's justify increasing the rate of the amount of boat that is floating in the open water that the state owns and is not in contact with any of the marina's equipment/services.

He incurs no additional cost is the boat is longer than the slip, is the cost of water going up????

He has already established the pricing for the overhang so I'm not challenging that only the increase incurred on the overhang, it should remain the same.

Will we get notification on the out coming of the hearing via email?

Thank you for your time,

4. RECOMMENDATION BY THE DNR DIVISION OF PARKS AND RESERVOIRS

As anticipated in the nonrule policy document, the Division of State Parks and Reservoirs has completed a comparative review of slip rates for Kent's Harbor. Gary Miller, Assistant Director of Inns and Concessions, prepared a summary of the review found below:

Kent's Harbor Marina has submitted a rate increase request for the 2009 season. Along with this, they have submitted rates increase requests for the lodging facilities located at the marina.

The Division of State Parks and Reservoirs has compared the existing rates of the marina to the existing rates of other marinas (see attached spreadsheet) and found that the rates for Kent's Harbor Marina are within the range of the other marinas. Kent's Harbor has some rates higher than other locations and has some rates lower than other marinas, but as a whole the rates are in line. Many of the marinas compared also do not

have lodging or a golf course available on site as does Kent's Harbor Marina.

It is the opinion of the Division that the proposed rates for the existing slips and the rates for lodging be approved as submitted.

The referenced spreadsheet is attached as Exhibit A

5. FINDINGS AND PROPOSAL BY THE COMMISSION'S DIVISION OF HEARINGS

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20 (First Amendment), which specifies that the lessee "shall include justification for the increase request along with comparable rates from other marinas." Information Bulletin #20 (First Amendment) proceeds to specify that "the department will analyze comparable facilities to compare rates with those sought by the lessee."

The Commission's role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U. S. Army Corps of Engineers (*USACE*), which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the "lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing" in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 (First Amendment) established as fundamental to a determination of the appropriateness of a proposed rate increase the consideration of rates charged by comparable marinas. The comparison therefore requires identification of marinas comparable to Kent's Marina. In addition to the marina, Mr. Reineking operates the Sagamore Resort, Ainsley's Café & Harbor Bar and Buck Creek Golf Club on the property. Similarly, Four Winds Resort and Marina (*Four Winds*), also provides lodging, dining, and lounge facilities in addition to its marina while the Hammond Marina (*Hammond*), offers banquet facilities, a lighted promenade as well as casino access including restaurants overlooking Lake Michigan. Kent's Harbor's proposed rates are consistent with and in many cases lower than the rates charged by Four Winds or Hammond.

By comparison Kent's Harbor's proposed rates are higher than the increased rates recommended for approval by the hearing officer for Hoosier Hills Marina (*Hoosier Hills*) and Patoka Lake Marina (*Patoka*). However, neither Patoka nor Hoosier Hills offer on-site lodging or other amenities similar to Kent's Harbor, Four Winds or Hammond. Given the overall differences in the marinas the higher rates proposed by Kent's Harbor are not disproportionate to Hoosier Hills or Patoka.

The individuals who offered comments acknowledge that Mr. Reineking operates the facility in a very professional manner and that the proposed increased rates are in line with inflation. Through the comments one individual has suggested that Kent's Harbor provide covered slips and a second comment questions the appropriateness of increasing the fee for overhangs. Mr. Reineking explained that in "areas prone to winter snow and ice stick" covered slips create liability associated with ice and snow accumulations that can damage or even sink floating docks. Furthermore, covered docks increase the risk and exposure to greater losses from fire due to the spread of flames laterally when they are prevented from extending vertically by the cover. Kent's Harbor is presently considering having single slip fabric covers available at the option of slip holders. These covers are removable during the winter months and will burn through in the event of fire thereby lessening the liability concerns. With respect to the increase in charges for overhangs, Mr. Reineking offered that "increased costs of operating marinas are not limited to the physical length of a dock finger" citing that property taxes increased by 10.25% in 2008. Therefore, an incremental increase in the per-foot rate for overhangs is consistent with the increase in slip fees. Overall, it appears that Kent's Harbor's patrons are very satisfied with the facility and its operation. It is the hearing officer's belief that Mr. Reineking's willingness to consider alternative means of accommodating his patrons requests, such as possibly offering the single slip covers, is a good indicator of the professionalism brought to this operation.

Since its last rate increase Kent's Harbor has paved three previously graveled parking areas and added twenty-five new paved parking spaces as well as two paved unloading zones. Pedestrian pathways and dock access drives are presently being repaved and a new promenade near the restaurant is scheduled for completion soon. Kent's Harbor has also upgraded its fuel system with 700 feet of seamless fuel lines along with upgraded fuel monitoring systems.

The preponderance of the evidence available for consideration reveals that the interim rates previously authorized by the Department should be confirmed and that the increases sought by Kent's Harbor, including increases to the interim rates, are reasonable and should properly be recommended for approval.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Kent's Harbor for implementation with the 2009 season, including the increase above the present interim rates for slips on the I-Dock, should be recommended to the U. S Army Corps of Engineers for approval.

The rates recommended for approval are identified as “Proposed 2009 Rates” on Exhibit B.

Dated: August 29, 2008

Sandra L. Jensen
Hearing Officer

Service List:

cc: Gary Miller, DNR, Division of State Parks and Reservoirs
Kent Reineking, Kent’s Harbor

AGENDA ITEM #17

Slip Length	Hoosier Hills	Fourwinds Lake Monroe IN	Patoka Lake Marina Patoka Lake IN	Kent's Harbor	Hammond Marina Hammond IN	Lee's Ford Nancy KY	Venetian Marina Sandusky OH	Two Rivers Marina Louisiana, Mo.
18'								
20'			600 s	1545 s				
24'	900		800/891 s/se	1595 s/1896 s				
24'	2000 c		1600 sc1850 ae	1795 s/2125 a				
25'							1350 s	
25'								
26'				2085 a				
26'								
26'								
26'								
28'			1035s/1300a/1750sc	2212 es/2445 a				
30'	2500 c	3736.5 c	28' 2000 ac	2405 a	\$2,225.00		1850 s	
30'	1100-1700			2745/2935 a				
32'						3170 c		
34'								
35'					\$2,570.00		2375 s	
36'		4483.8 c		2725 a				\$2,700.00
36'				3085 a				
36'				3295 a				
36'								
38'								
40'			2185 a	2995 a	\$3,035.00	4395 c		\$3,000.00
40'			3700 a c			3345 o		
40'								
42'		4180.25 o						
45'	2000				\$3,615.00			
46'				4075 a				
46'								
46'								
46'								
48'		5978.8 c						\$3,595.00
50'	2310			3430 a	4250/4610	5405 c	3475 s	
52'								
54'		6426. c						
55'					\$4,800.00			
60'	3080/2530		2750 a/4250 ac	4142.5 a	\$5,350.00	7535 c		\$4,495.00
61'-Up				71.25/ft a	86.00/ft			
64'								
70'	3300/2750			6450 a				
72'		8968 c						
75'	3750		80' 3795 a/5300 ac					
76'		6967 o						
80'	4000					6330 o		
90'+								

Exhibit A

AGENDA ITEM #17

Slip Length	Hidden Cove Marina Senica, IL.	Bald Knob Marina Pistakee Lake IL.	Starved Rock Marina Starved Rock State Park IL	Twin Cove Marina Norris Lake KY	Eddy Creek Marina Kentucky Lake	The Moors Kentucky Lake	Lake Murray Ballantine, SC	Lynn Creek Grand Prairie, TX
18'	\$1,030.00							
20'	\$1,080.00		\$1,165.00		\$960.00		\$2,100.00	\$2,222.00
24'				\$1,560.00		\$1,050.00		2043 o
24'								2736 c
25'	\$1,255.00		\$1,550.00					
25'								
26'	\$1,295.00						\$2,300.00	
26'							\$2,599.00	
26'							\$2,880.00	
26'								
28'	\$1,375.00							
30'	\$1,455.00	\$2,595.00	\$1,900.00	\$2,400.00	\$1,710.00	\$1,650.00	\$3,132.00	2853 o
30'								3386 c
32'								
34'				\$3,000.00				
35'	\$1,655.00	\$3,260.00						
36'							\$3,772.00	\$4,081.00
36'								
36'								
36'								
38'								
40'	\$1,855.00		\$2,185.00			\$2,150.00		
40'								
40'								
42'								
45'								
46'	\$2,095.00							
46'								
46'								
46'								
48'								
50'	\$2,255.00		\$2,535.00		\$2,850.00	\$2,550.00	\$5,106.00	\$5,201.00
52'								
54'								
55'	\$2,455.00							
60'	\$2,605.00						\$6,452.00	
61'-Up					69.00/ft			
64'								
70'							\$8,100.00	
72'								
75'								
76'								
80'								
90'+								

AGENDA ITEM #17

Slip Length	Son Rise Marina Sandusky, OH 6 month Summer only - Winter not included	Sandusky Harbor Sandusky, OH Summer and Winter Storage Combined Included	North Shore Spring Lake, MI Summer Only	Holiday Marina Lake Lanier, GA Annual	Four Winds Bloomington, IN	Bay Harbor Bay Harbor MI	Lake Front Lake Erie, OH Annual Dockage and Winter Storage
18'							
20'				\$1,792.00			
24'				\$2,184.00	\$2,020.00		\$2,352.00
24'							
25'		\$2,908.75	\$3,195.00				
25'							
26'			\$3,195.00	\$2,276.00			
26'					\$2,189.00		
26'							
26'							
28'					\$2,440.00		
30'		\$3,347.50		\$2,712.00		\$4,950.00	\$3,468.00
30'			\$3,195.00				
32'					\$2,762.00		
34'							\$4,065.00
35'			\$3,795.00				
36'				\$2,972.00	\$3,150.00		
36'					\$3,357.00		
36'					\$3,565.00		
36'					\$3,778.00		
38'							
40'	\$2,950.00			\$3,036.00	\$3,418.00	\$7,800.00	\$4,938.00
40'			\$3,995.00				
40'							
42'							
45'							
46'				\$3,496.00	\$3,794.00		\$5,681.00
46'					\$4,078.00		
46'							
46'							
48'							
50'	\$3,800.00		\$4,795.00	\$3,824.00	\$4,275.00	\$9,250.00	
52'							
54'							
55'							
60'				\$4,564.00	\$5,700.00		
61'-Up			\$5,395.00				
64'							
70'				\$5,576.00			
72'							
75'							
76'							
80'							
90'+							

AGENDA ITEM #17

Slip Length	Lazy Days Lake Lanier Buford, GA	Light House Marina Aurora, IN	Four Season Cincinnati, OH Seasonal	Jamestown Lake Cumberland, KY Annual	Charleston Harbor Marina Charleston SC Annual	Conley Bottom Lake Cumberland, KY	Manitowoc Marina Manitowoc, WI Summer Dockage and Winter Storage Annual
18'							
20'	\$2,220.00		1540 s				
24'	\$2,736.00		\$1,848.00	\$2,695.00			
24'							
25'			\$77.00 Summer				
25'							
26'	\$2,968.00		\$27.00 Winter				
26'			\$104.00/ft. Annual				
26'							
26'			\$2,704.00				
28'			\$2,912.00			\$2,450.00	
30'	\$3,512.00		\$3,120.00	\$3,995.00			\$2,220.00
30'							
32'			\$3,328.00 Annual		\$4,940.00		
34'						\$3,200.00	
35'							
36'	\$4,212.00						\$3,040.00
36'			\$3,774.00				
36'							
36'							
38'						\$4,100.00	
40'		\$3,735.00		\$3,850.00	\$5,985.00	\$4,275.00	\$3,295.00
40'			\$4,160.00	\$4,795.00			
40'				\$5,495.00			
42'						\$4,700.00	
45'			\$4,680.00 Annual				
46'		\$4,085.00					
46'							
46'							
46'							
48'							
50'		\$4,385.00	\$5,200.00	\$4,895.00	\$7,790.00		
52'				6195 50' c			
54'							
55'							
60'		\$4,985.00	\$6,240.00				
61'-Up					\$10,260.00		
64'							
70'				\$9,395.00			
72'							
75'							
76'							
80'				6995 o			
90'+							

AGENDA ITEM #17

Slip Length	Bayport Marina Bayport, MN St. Croix River \$180/ft. summer & winter storage	Broken Arrow Marina Sunrise Beach, MO	Trade winds Marina Appling, GA Annual	Aqua Yacht Harbor Luka, MS	Michigan City Port Authority Michigan City, IN Summer Only	Swan Creek Roch Hall MD	Harrington Harbor Friendship MD
18'							
20'			\$1,767.00	\$1,450.00			
24'			\$2,565.00	\$1,700.00		\$2,900.00	
24'							
25'	\$4,540.00				\$1,650.00		
25'							
26'							\$2,900.00
26'							
26'							
26'							
28'			\$3,211.00				
30'	\$5,440.00			\$3,000.00	\$2,100.00		
30'							
32'							
34'							
35'					\$2,530.00		
36'			\$3,610.00				
36'							
36'							
36'							
38'							
40'		\$3,300.00		\$4,375.00	\$3,015.00		
40'							
40'							
42'							
45'		\$3,650.00			\$3,535.00		
46'							
46'							
46'							
46'							
48'		\$4,645.00	\$4,427.00				
50'			\$5,434.00	\$5,700.00	\$4,300.00	\$4,200.00	
52'		\$4,991.00					
54'							
55'			\$5,947.00				
60'					\$5,350.00		
61'-Up							
64'							
70'							
72'							
75'							
76'							
80'							
90'+							

Slip Length	Lake LBJ Horseshoe Bay, TX Annual	Emerald Point Marina Lake Travis, TX Annual Lease
18'		
20'		\$2,520.00
24'		
24'		
25'	\$2,809.00	
25'	\$3,001.00	
26'		\$2,700.00
26'		
26'		
26'		
28'		\$3,000.00
30'	\$3,900.00	
30'		
32'		
34'	\$4,908.00	
35'		
36'		\$5,880.00
36'		
36'		
36'		
38'		
40'	\$5,904.00	
40'		
40'		
42'		
45'		\$8,280.00
46'		
46'		
46'		
46'		
48'		
50'		
52'		
54'		
55'		
60'		
61'-Up		
64'		
70'		
72'		
75'		
76'		
80'		
90'+		

Kent's Harbor 2007 – 2008 Dockage Rates

Proposed 2009 Rates

B through G – Docks

20'	\$1545.00	Seasonal	\$1595.00
26'	\$2085.00	Annual	\$2190.00
30'	\$2405.00	"	\$2525.00
36'	\$2725.00	"	\$2865.00
40'	\$2995.00	"	\$3175.00
50'	\$3430.00	"	\$3615.00
Over 50'	\$71.25 / Ft.		\$75.50 / Ft.

H – Dock

24'	\$1595.00	Seasonal	\$1675.00
18'x60'	\$4142.50	Annual	\$4390.00
Over 60'	\$71.25 / Ft.		\$75.50 / Ft.

A – Dock

24'	\$1795.00	Seasonal	\$1885.00
28' End	\$2212.00	"	\$2295.00
13'x24'	\$2125.00	Annual	\$2230.00
13'x28'	\$2445.00	"	\$2575.00
14'x30'	\$2745.00	"	\$2885.00
15'x30'	\$2935.00	"	\$3085.00
15'x36'	\$3085.00	"	\$3240.00
16'x36'	\$3295.00	"	\$3460.00
18'x46'	\$4075.00	"	\$4280.00
20'x70'	\$6450.00	"	\$6775.00
Over 70'	\$90.00		\$94.50

I – Dock

24'	\$1896.00	Seasonal	\$1990.00
28'	\$2380.00	"	\$2495.00

Sagamore Resort 2007 – 2008 Lodging Rates

Proposed 2009 Rates

Studio	\$149.00 per night	\$159.00
One Bed room	\$184.00 per night	\$197.00
Two Bed room	\$249.00 per night	\$269.00

